

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

20-cr-500 (JGK)

- against -

ORDER

ARTHUR HAYES ET AL.,  
Defendants.

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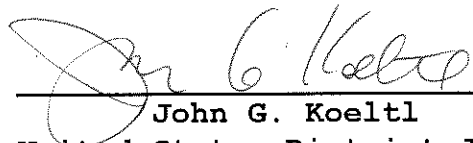
JOHN G. KOELTL, District Judge:

By letter dated October 22, 2021, the Government sought to require the defendants to disclose by November 12, 2021, whether they intend to rely on an advice of counsel defense, and if so, to disclose to the Government all documents supporting or undermining such a defense, as well as a privilege log. By letter dated October 29, 2021, the defendants Hayes, Delo and Reed proposed to make "a disclosure consistent with relevant case law on December 3, 2021." While the letter does not specifically refer to the production of supporting or undermining documents, the cases referred to did require disclosure of documents. The difference between disclosure on November 12, 2021 and December 3, 2021, should not affect any of the other deadlines in this case, although the Court may have to establish a new deadline for any motions directed to the assertion of the attorney client privilege. Therefore, the defendants' application to make disclosure of whether they intend to rely on the attorney client privilege on December 3, 2021, is granted, and the Government's request for disclosure on November 12, 2021, is denied.

The defendants also contend that a determination of whether to assert the privilege may depend on the completion of discovery. The only two items the defendants point to are the outstanding request for a bill of particulars, but that application has only recently been fully briefed, and an outstanding request for materials from the CFTC. At the last conference, the Court advised the parties to continue to attempt to resolve issues of disclosures from the CFTC and to advise the Court if they have arrived at an impasse and at which point the Court will promptly advise the parties if the Government is required to provide any further materials from the CFTC. It is unclear why either of these two issues should affect the timing of disclosure of whether the defendants are relying on the advice of counsel defense and the associated documents.

**SO ORDERED.**

**Dated: New York, New York  
October 29, 2021**

  
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**John G. Koeltl**  
**United States District Judge**